FILED
FEB 28 1991
OFFICE OF THE CLERK

(9)

NO. 90-953

in the Supreme Court of the United States

October Term, 1990

CITY GAS COMPANY OF FLORIDA,
Petitioner,

vs.

CONSOLIDATED GAS COMPANY OF FLORIDA, INC.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOINT MOTION TO GRANT CERTIORARI, VACATE JUDGMENT OF COURT OF APPEALS AND REMAND WITH DIRECTIONS TO VACATE JUDGMENT OF DISTRICT COURT ON GROUNDS OF MOOTNESS

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The parties[1] to this proceeding jointly move the Court to grant certiorari, vacate the judgment of the Court of

[1]The statement of City Gas Company of Florida pursuant to Supreme Court Rule 29.1 can be found at page 1, note 1 of its Petition. Pursuant to that rule, Consolidated Gas Company of Florida, Inc. states that it has no parents or subsidiaries.

Appeals for the Eleventh Circuit and remand the case to the court of appeals with instructions to vacate the district court's August 14, 1987 Final Judgment and July 24, 1987 Findings of Fact and Conclusions of Law and remand for dismissal of this action with prejudice.

This case has been settled amicably by the parties and general releases have been exchanged. The parties' settlement agreement obligates respondent to file a Satisfaction of Judgment if the Final Judgment entered by the district court remains extant and prohibits respondent from initiating proceedings before the Florida Public Service Commission so as to invoke the injunctive relief granted by the district court. The case is, accordingly, moot. As this Court noted in *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950), "[t]he established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." *See, e.g., Onwuasoanya v. United States*, 488 U.S. 920 (1988); *Deakins v. Monaghan*, 484 U.S. 193, 200 (1988) ("When a claim is rendered moot while awaiting review by this Court, the judgment below should be vacated with directions to the District Court to dismiss the relevant portion of the complaint"); *Russoniello v. Olagues*, 484 U.S. 806 (1987); *Tulare Lake Canal Co. v. United States*, 459 U.S. 1095 (1983); *Alabama v. Davis*, 446 U.S. 903 (1980). *See generally* 13A C. Wright et al., *Federal Practice and Procedure* § 3533.10 at 433-35 (1984). In accordance with this authority, the parties respectfully request that this Court grant certiorari, vacate the judgment of the court of appeals and remand the case with instructions that the court of appeals vacate the Final Judgment and Findings of Fact and Conclusions of Law entered by the district court on the grounds of mootness and remand to the district court for dismissal with prejudice.

Respectfully submitted,

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Dated: February 27, 1991